APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,239	05/07/2004	Timothy L. Robinson	134779.11801	7593

21269   7590   10/30/2008
PEPPER HAMILTON LLP
ONE MELLON CENTER, 50TH FLOOR
500 GRANT STREET
PITTSBURGH, PA 15219

EXAMINER
ROSARIO, DENNIS

ART UNIT	PAPER NUMBER
2624	

MAIL DATE	DELIVERY MODE
10/30/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
	10/840,239	ROBINSON ET AL.
Office Action Summary	Examiner	Art Unit	
	Dennis Rosario	2624	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 August 2008*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4,5,9,10,12-15,31,32,34 and 35* is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4,5,9,10,12-15,31,32,34 and 35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *07 May 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date *7/23/08*.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Amendment

1.　　The amendment was received on 8/4/08. Claims 1,4,5,9,10,12-15,31,32,34 and

35 are pending.

Response to Arguments

2.　　Applicant's arguments filed 8/4/08 have been fully considered but they are not

persuasive.

　　　　　Applicants state that Bianco does not disclose the generating limitation of

claim 1. The examiner respectfully disagrees since Bianco discloses generating

upgraded biometric data (or an upgraded or refresh a template via re-enrollment

and authentication as discussed in col. 28, lines 43 to col. 29, line 10) based on a

combination of biometric data (during authentication that compares data of a user

wishing to update their biometric template) associated with said user record (for

example an image of a person with short hair) received from a second biometric

device (at an earlier time) and said received biometric data (at a later time) [from

a first biometric device] if the first biometric device (of said later time) is of a

higher quality than the second biometric device (given that the biometric device

of said later time has updated facial characteristics such as longer hair that

provides better authentication relative to said second biometric device that

produced an image of short hair that does not currently match the features of the

same user that has longer hair).

Applicants state that Bianco does not teach the combination of biometric data to generate upgraded biometric data. The examiner respectfully disagrees since Bianco teaches an equation that combines two values as shown in fig. 21B:2124 to obtain TEMP SCORE that is used to authenticate a user via a comparison in fig. 21B:2126 that in itself is a combination, too.

Applicants state that the biometric server of Bianco is not a local biometric device. The examiner respectfully disagrees since the metes and bounds of local have not been established in the claims. Thus, the biometric server is local relative to fig. 1:106 and distant relative to fig. 1:112.

Applicants state that storage integrity does not relate to a quality of a biometric device. The examiner respectfully disagrees since if the storage integrity fails then the associated stored biometric device data will be compromised thus providing stored biometric device data that is of poor quality.

Applicants state that Bianco does not disclose upgrading biometric data based on the quality of a local biometric device. The examiner respectfully disagrees since Bianco teaches updating a biometric template based on the quality corresponding to said storage integrity to produces data of good quality or how old data is of a local biometric device (said biometric server that produces good quality data in the event of a data loss or biometric device that obtained biometric data from a long time ago.)

Applicants state that Bianco does not teach determining anything based on the quality of a local biometric device that takes biometric information from a

user. The examiner respectfully disagrees since Bianco teaches using a series of biometric device scores which is a form of quality of a device where if one of the biometric devices fails to authenticate a user as represented in fig. 17A:1708 as the YES branch based on said score obtained from the device, then another biometric device is used for authentication to ensure via fig. 17A:1718 that a user is genuine.

Applicants state that Bianco does not teach determining whether received biometric data is useful to upgrade second biometric data based on a quality of the local biometric device. The examiner respectfully disagrees since Bianco teaches a user or administrator is given the decision to update a corresponding biometric template after authentication as discussed in col. 28, lines 48-52 and 57-59 where the authentication is based on said score obtained from a device which corresponds to the quality of a local biometric device.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "combining portions of separate biometric data" on page 11 of the remarks and "generation of new data by combining data from multiple devices or received at different times" on page 11 and "combining biometric data…with received biometric data to generate upgraded…data" on page 12 and "quality of biometric device refers to the capabilities of the biometric device with respect to extracting biometric information from a user and providing such information to another device" on page 13) are not recited in the rejected claim(s). Although

the claims are interpreted in light of the specification, limitations from the

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181,

26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4.   Claims 1,4,5,9,10,12-15,31,32,34 and 35 are rejected under 35 U.S.C. 102(e) as

being anticipated by Bianco et al. (US Patent 6,256,737 B1).

Regarding claim 1, Bianco discloses a method in a biometric authorization

system, the method comprising:

a)   receiving, from a first biometric device (fig. 1:106 for re-enrollment of users), biometric data that is based on biometric information that is taken from a user;

b)   locating a user record (via fig. 14 that allows a user to find a list of users) associated with said user (for enrollment or re-enrollment purposes);

c)   generating (via fig. 1, num. 106) upgraded biometric data (corresponding to said re-enrollment of users that desire to update their respective biometric template as discussed in col. 28, line 43 to col. 29, line 10) based on a combination of biometric data (or combined scores as shown in fig. 21B:2124) associated with said user record (corresponding to said list) received from a second biometric device (fig. 1:106 for enrollment purposes) and said received biometric data (from said re-enrollment) if the first biometric device (106 for re-enrollment purposes) is of a higher quality (or provides current facial features as discussed in col. 28, lines 43-52) than the second biometric device (that provides out of date facial features); and

d)   storing the upgraded biometric data (from the re-enrollment) in said user record (that is stored in fig. 1, num. 110).

Regarding claim 4, Bianco discloses the method of claim 1, further comprising:

a)   prompting said user for one or more additional biometric samples (corresponding to fig. 8B, num. 826) to employ (in the event of said data loss) for said generating upgraded biometric data.

Regarding claim 5, Bianco discloses the method of claim 1, further comprising:

a)   generating a biometric template (fig. 5, num. 502) from said received biometric data.

Regarding claim 9, Bianco discloses the method of claim 1, further comprising:

a)   receiving (as done by fig. 5, num. 104) a user identification code (from fig. 5, num. 510).

Regarding claim 10, Bianco discloses the method of claim 1, wherein said upgrading generating upgraded biometric data is initiated by a third party system (or said fig. 1, num. 110 that upgrades biometric data in the event of a data loss of fig. 1, num. 104).

Regarding claim 12, Bianco discloses the method of claim 1, wherein said storing is determined by the system (as indicated by the flowchart in fig. 6:622).

Regarding claim 13, Bianco discloses the method of claim 1, wherein said storing comprises:

a)   storing a plurality of biometric data upgrade transactions (corresponding to fig. 6:622:BIOMETRIC TEMPLATES that can be upgraded).

Regarding claim 14, Bianco discloses the method of claim 1, further comprising:

a)   comparing (using fig. 1, num. 106), at a local biometric device (relative to fig. 1, num. 112), said received biometric data or a biometric template based on said received biometric data with said biometric data associated with said user record.

Regarding claim 15, Bianco discloses the method of claim 1, further comprising: comparing (using fig. 1, num. 106), at a central database (fig. 1, num. 108 which is local to fig. 1, num. 106 as compared to fig. 1, num. 112), said received biometric data or a biometric template based on said received biometric data with said biometric data associated with said user record.

Claim 31 is rejected the same as claim 1. Thus, argument similar to that

presented above for claim 1 is equally applicable to claim 31 except for the

additional limitations of:

a)   receiving, at a database (fig. 1:104), biometric data that is based on

biometric information taken from a user at a local biometric device;

b)   authorizing said user at said database, said authorization being based on

a comparison using said received biometric data and second biometric data that is

associated with said located user record (this limitation is recognized as authentication

that describes the limitation as known to one of ordinary skill in biometrics)

Claim 32 is rejected the same as claim 9. Thus, argument similar to that

presented above for claim 9 is equally applicable to claim 32.

Regarding claim 34, Bianco discloses the method of claim 31, wherein said

determining comprises:

a)   determining whether said received biometric data (of fig. 1, numerals 108

and 110) can augment previously registered biometric data (during a check of data loss

of fig. 1, num. 104).

Regarding claim 35, Bianco discloses the method of claim 31, wherein said

determination is based on an age (or "file date" in col. 51, lines 40-43) of previously

registered biometric data.

Conclusion

5.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Dennis Rosario whose telephone number is (571) 272-

7397. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Matthew Bella can be reached on (571) 272-7778. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Rosario/   /Matthew C Bella/
Examiner, Art Unit 2624   Supervisory Patent Examiner, Art
                                                               Unit 2624